

**PROFESSIONAL SERVICES AGREEMENT FOR
ON-CALL PLANNING CONSULTING SERVICES**

THIS AGREEMENT is entered into between Pacific County, hereinafter referred to as "the County", and DCG/Watershed, Inc., hereinafter referred to as "the Consultant", in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. Project Designation. The Consultant is retained by the County to provide planning services on an as needed basis.
2. Scope of Services. Consultant agrees to perform the services, identified on Exhibit A (Scope of Work) attached hereto, including the provision of all labor.
3. Time for Performance. Work under this contract shall commence upon the giving of written notice by the County to the Consultant to proceed. The Consultant shall provide land use planning support to the County on an as-needed basis.
4. Payment. The Consultant shall be paid by the County for completed work and for services rendered under this agreement as follows:
 - a. Payment for the work provided by Consultant shall be made as invoiced by the Consultant on a monthly basis. The total amount of payment to Consultant shall not exceed \$10,000 per month without express written modification of the agreement signed by the County.
 - b. Each of the Consultant's invoices shall include a detailed description of services performed, the number of hours spent performing such services and any reimbursable costs and expenses incurred. Such vouchers will be checked by the County, and upon approval thereof, payment will be made to the Consultant in the amount approved.
 - c. Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment and incidentals necessary to complete the work.
 - d. The Consultant's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of the County and state for a period of three (3) years after final payments. Copies shall be made available upon request.
5. Ownership and Use of Documents. All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this agreement shall be the property of the County whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Consultant's endeavors.

6. Compliance with laws. Consultant shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this agreement.
7. Indemnification/Hold Harmless.
 - a. **Indemnification by Consultant.** To the fullest extent permitted by law, the Consultant agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, reasonable attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property, including the loss of use resulting therefrom. The indemnity includes but is not limited to: 1) liability arising in whole or in part by any action or omission, negligent or otherwise, of the Consultant, its employees, agents or volunteers or Consultant's subcontractors and their employees, agents or volunteers; or 2) liability directly or indirectly arising out of, resulting from, or in connection with performance of this Contract; or 3) liability based upon the Consultant's or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the Consultant shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the Consultant shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Consultant hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Consultant are a material inducement to COUNTY to enter into the Contract, are reflected in the Consultant's compensation, and have been mutually negotiated by the parties.
 - b. **Participation County – No Waiver.** The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Consultant's indemnity obligations under the Contract.
 - c. **Survival of Consultant's Indemnity Obligations.** The Consultant agrees all Consultant's indemnity obligations shall survive the completion, expiration or termination of this Contract.

8. **Insurance.** Without limiting the Consultant's indemnification of COUNTY, and prior to commencement of this Contract, Consultant shall obtain, provide and maintain during the term of this Contract, policies or insurance of the type and amounts described below and, in a form, satisfactory to the COUNTY.

- a. **General Liability Insurance.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
- b. **Professional Liability (Errors & Omissions) Insurance.** Consultant shall maintain professional liability insurance that covers the services to be performed in connection with this Contract, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Contract.
- c. **Workers' Compensation Insurance.** Consultant shall, at its own expense, maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

Consultant shall submit to COUNTY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of COUNTY, its officers, agents, employees and volunteers.

- d. **Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.
- e. **Automobile Liability Insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

The Consultant shall provide the COUNTY with properly executed certificate of insurance and provide a policy endorsement naming the COUNTY as an additional insured. Consultant agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that Consultant's liability insurance policy shall so state.

9. Independent Consultant. The Consultant and the County agree that the Consultant is an independent Consultant with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Consultant nor any employee of Consultant shall be entitled to any benefits accorded County employees by virtue of the services provided under this agreement. The County shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Consultant, or any employee of Consultant.
10. Covenant Against Contingent Fees. The Consultant warrants that he has not employed or retained any company or person, other than a bonafide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the County shall have the right to annul this contract without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
11. Discrimination Prohibited. The Consultant, with regard to the work performed by it under this agreement, will not discriminate on the grounds of race, color, national origin, religion, creed, age, sex or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.
12. Assignment. The Consultant shall not sublet or assign any of the services covered by this agreement without the express written consent of the County.
13. Non-Waiver. Waiver by the County of any provision of this agreement or any time limitation provided for in this agreement shall not constitute a waiver of any other provision.
14. Termination. The County reserves the right to terminate this agreement at any time by giving ten (10) days written notice to the Consultant.
15. Notices. Notices to Pacific County shall be sent to the following address:
Pacific County Department of Community Development
PO Box 68
South Bend, WA 98586

Notices to Consultant shall be sent to the following address:
DCG/Watershed, Inc.
750 Sixth Street South
Kirkland, WA 98033

16. Integrated Agreement. This Agreement together with attachments or addenda, represents the entire and integrated agreement between the County and the Consultant and supersedes all prior negotiations, representations, or agreements written or oral. This agreement may be amended only by written instrument signed by both County and Consultant.

17. Public Records Act.

This Agreement and all public records associated with this Agreement shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Consultant are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the Consultant agrees to make them promptly available to the COUNTY. If the Consultant considers any portion of any record provided to the COUNTY under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Consultant shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the Consultant and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the Consultant (a) of the request and (b) of the date that such information will be released to the requester unless the Consultant obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Consultant fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the Consultant to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the Consultant for releasing records not clearly identified by the Consultant as confidential or proprietary. The COUNTY shall not be liable to the Consultant for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

Consultant agrees to indemnify and, to the greatest extent legally possible, to hold harmless the COUNTY in any action by a third party due to the negligence, recklessness or intentional actions by the Consultant relating to its performance of this contract. This includes any lawsuit filed by a third party for the COUNTY's allegedly improper release of confidential or proprietary information pursuant to a public records request.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed
This ____ day of _____ 2023.

Board of County Commissioners

DCG/Watershed, Inc.

Lisa Olsen, Chair

Dan Nickel

Jerry Doyle, Commissioner

David Tobin, Commissioner

ATTEST:

Amanda Bennett, Clerk of the Board

EXHIBIT A

SCOPE OF WORK

DCG/Watershed's planning staff will assist Pacific County by providing temporary land use planning support to the County's Department of Community Development (DCD). Alexandra Plumb, Environmental Planner, will lead this coordination from DCG/Watershed. Alexandra is currently assisting the County on various long-range planning support efforts and has prior experience working directly for DCD to perform current and long-range planning activities, including reviewing and processing of permit applications and corresponding with applicants. Alexandra would be supported by our team of both land use and environmental planners to ensure communication is timely, reviews are thorough, and our input is accurate. The goal is to provide professional planning guidance to DCD during this temporary time-period and help fill gaps as needed to ensure development review is completed.

Tasks performed by DCG/Watershed will be by request from DCD and billed on a time and materials basis. This assumes that most tasks can be conducted virtually or remotely. In-person meeting attendance (i.e. with applicants, DCD staff, hearings, etc.) is possible upon request, but travel time and mileage will be billed from our Mount Vernon office (Alexandra Plumb's location). Site visits to verify field conditions (i.e. critical areas) may be conducted upon request and may involve staff from a closer location.

Our planning staff's hourly billing rates, along with administrative staff who may also assist, are included below.

Hourly Rates Effective July 2023*

Dan Nickel, MSc	Director of Planning	\$220.22
J. Kenny Booth, AICP	Director of Current Planning	\$220.22
Mark Daniel, AICP	Senior Planner	\$183.60
Alex Capron, AICP	Senior Planner	\$167.40
Kimberly Frappier, MSc	Senior Arborist/Environmental Planner	\$167.40
Clover McIngalls, PWS	Environmental Planner	\$162.00
Dawn Spilsbury	Environmental Planner/GIS Analyst/Drone Pilot	\$140.40
Devin Melville	Environmental Planner	\$130.22
Alexandra Plumb	Environmental Planner	\$125.00
Laura Jones	Environmental Planner	\$125.00
Brianna Hines	Environmental Planner	\$124.20
David Jackson	Environmental Planner	\$121.06
Debra Klein	Accountant	\$120.22
Sandy Jimenez	Project Coordinator	\$110.00

Acronym Key:

GIS = Geographic Information System

PWS = Professional Wetland Scientist as certified by the Society of Wetland Scientists

AICP = American Institute of Certified Planners

MSc = Master of Science degree

*Rates for 2023 only; escalator clause for cost of living or staff promotions may apply in future years